

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FRANKLIN LOVING,

Plaintiff,

-against-

SUPERINTENDENT, DOWNSTATE  
CORRECTIONAL FACILITY; JOHN OR JANE  
DOE, M.D.,

Defendants.

20-CV-11135 (KMK)

ORDER OF SERVICE

KENNETH M. KARAS, United States District Judge:

Plaintiff, currently incarcerated in the Bare Hill Correctional Facility, brings this *pro se* action seeking damages and alleging that the defendants violated his federal constitutional rights. He sues an unidentified “John or Jane Doe” physician employed in the Downstate Correctional Facility, as well as the Superintendent of that facility (“Superintendent”). By order dated February 23, 2021, the Court granted Plaintiff’s request to proceed without prepayment of fees, that is, *in forma pauperis* (“IFP”).<sup>1</sup>

**DISCUSSION**

**A. Service on the Superintendent**

As Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *See Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the Court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP). Although Rule 4(m) of the Federal Rules

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<sup>1</sup> Prisoners are not exempt from paying the full filing fee, even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

of Civil Procedure generally requires that a summons and the complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served a summons and the amended complaint on the Superintendent until the Court reviewed the amended complaint and ordered that a summons be issued for the Superintendent. The Court therefore extends the time to serve the Superintendent until 90 days after the date that a summons is issued for the Superintendent. If the amended complaint is not served on the Superintendent within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) (summary order) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service of the amended complaint on the Superintendent through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for the Superintendent. The Clerk of Court is further instructed to issue a summons for the Superintendent and deliver to the Marshals Service all of the paperwork necessary for the Marshals Service to effect service of the amended complaint on the Superintendent. Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss this action if Plaintiff fails to do so.

#### **B. Unidentified "John or Jane Doe" Defendant**

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying an unidentified defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the amended complaint, Plaintiff supplies sufficient information to permit the New York State Department of Corrections and Community Supervision ("DOCCS") to identify the unidentified "John or Jane

Doe” Defendant. The “John or Jane Doe” Defendant is the physician who conducted a medical screening and physical examination of Plaintiff upon his entry into the Downstate Correctional Facility on a date in January 2019. The Court therefore orders the Attorney General of the State of New York, who is the attorney for and agent of DOCCS, to ascertain the identity of the “John or Jane Doe” Defendant whom Plaintiff seeks to sue here, and the address where that Defendant may be served. The Attorney General must provide this information to Plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file a second amended complaint naming the newly identified defendant. The second amended complaint will replace, not supplement, the original and amended complaints. A second amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed a second amended complaint, the Court will screen it and, if necessary, issue an order directing service on the newly identified defendant.

### **CONCLUSION**

The Court directs the Clerk of Court to mail a copy of this order to Plaintiff, together with an information package.

The Court also directs the Clerk of Court to: (1) issue a summons for the Superintendent of the Downstate Correctional Facility, (2) complete a USM-285 form with the service address for the Superintendent, and (3) deliver all documents necessary to effect service of the summons and the amended complaint (ECF No. 6) on the Superintendent to the U.S. Marshals Service.

The Court further directs the Clerk of Court to mail a copy of this order and the amended complaint (ECF No. 6) to the Attorney General of the State of New York, at 28 Liberty Street, New York, New York 10005.

A second amended civil rights complaint form is attached to this order.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: February 26, 2021  
White Plains, New York

A handwritten signature in black ink, appearing to read 'K. Karas', written over a horizontal line.

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KENNETH M. KARAS  
United States District Judge

**DEFENDANT AND SERVICE ADDRESS**

Superintendent  
Downstate Correctional Facility  
121 Red Schoolhouse Road  
Fishkill, New York 12524-0445